

STRAITS SETTLEMENTS REPORTS.

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[APPELLATE CIVIL JURISDICTION]

BURTON, Ag. C.J.,

THOMAS, C.J. (F.M.S.) & TERRELL, J.

July 1, 1935.

IN THE MATTER OF AN APPLICATION
FOR A WRIT OF PROHIBITION.

AND

IN THE MATTER OF SINGAPORE
IMPROVEMENT ORDINANCE (1927).

[SINGAPORE ORIGINATING SUMMONS No. 150 of
1934]

[SINGAPORE CIVIL APPEAL No. 4 of 1935]

Writ of Prohibition—Singapore Improvement Trust—Singapore Improvement Ordinance 1927 Part V.

Held, on appeal to the Court of Appeal from the Judgment of Huggard C.J. reported in 4 Mal.L.J. at p. 99,

- (1) There is nothing in The Singapore Improvement Ordinance to justify the proposition that Section 57 of the Ordinance does not apply to any one house in a block (by all Judges).
- (2) And the Board can only consider the construction and condition of the house itself. (By all Judges).
- (3) The proximity of other houses however may have caused the house to be constructed as it is. (By Thomas, C.J., F.M.S. and Terrell, J.)
- (4) And the owner of a house cannot trust to his neighbours ground for ventilation or sanitation or light (by Thomas, C.J., F.M.S. and Terrell, J.)
- (5) And if a house is back to back with another house this is a matter of construction of the house itself as it has been built up to the very edge of the site. (By Thomas, C.J., F.M.S. and Terrell, J.)
- (6) If the Singapore Improvement Trust considered matters which it had no right to consider, this was not merely an error of procedure but went to the root of its jurisdiction (by Terrell, J.)
- (7) Sending the Report of the Health Officer by the Singapore Improvement Trust to the objectors was not giving to them a proper statement of grounds within the meaning of section 58 (5) of the Ordinance (Burton, Ag. C.J. and Terrell, J.)
- (8) This was a defect arising on the face of the proceedings and therefore could not be waived and until the provisions of the order had been complied with the Board's statutory jurisdiction to consider objections and to submit a declaration to the Governor in Council did not arise (Burton, Ag. C.J. and Terrell, J.)
- (9) If the defect could have been waived, the objectors had waived it (Terrell, J. *obiter*).
- (10) The Singapore Improvement Trust had made no order or imposed any penalty and had no power to determine questions affecting the rights of subjects and had not done so and therefore could not be prohibited (Thomas, C.J., F.M.S. and Terrell, J., Burton, Ag. C.J. dissenting).
- (11) The application for prohibition was made too late and was in respect of purely ministerial acts. Although it has been said that prohibition

will still lie so long as it has "something left to act upon" this relates to some power still remaining with a Tribunal to enforce its order (Thomas, C.J., F.M.S. and Terrell, J., Burton, Ag. C.J. dissenting).

- (12) Prohibition will not stop the further proceedings before the Governor in Council and will not prevent the Governor in Council from making an order (all Judges).
 - (13) The Singapore Improvement Trust has a right and not a duty to appear before the Governor in Council (all Judges).
 - (14) The consequent proceedings before the Governor in Council and thereafter are a new matter (Thomas, C.J., F.M.S.).
 - (15) When the Singapore Improvement Trust is by law invested with the power of adopting alternative remedies for effecting slum clearance the Board has not only a right but probably a duty to adopt the cheaper method. (Terrell, J.).
- Appeal allowed accordingly, (Burton, Ag. C.J. dissenting).

Appeal to the Court of Appeal from the order of Huggard C.J. directing the issue of writs of prohibition as reported in 4 Mal.L.J. at p. 99.

In the Court below, application was made in three cases for the issue of these writs, these applications being by Originating Summonses in O.S. Nos. 150, 151 and 152 of 1934 in the Supreme Court of the Straits Settlements, Singapore. Appeals were lodged in each case but only one was argued (No. 150 of 1934) the other two being adjourned.

Roland Braddell, John Laycock and Briggs
for Appellants.

H. D. Mundell and Smith for Respondents.

The arguments sufficiently appear from the Judgments.

Cur. Adv. Vult.

BURTON, AG. C.J.—On 23rd November, 1933, the Singapore Improvement Trust made a Declaration under section 57 of the Singapore Improvement Trust Ordinance, based upon a report of the Acting Municipal Health Officer, that 94 houses within the area bounded by Victoria Street, Bugis Street, North Bridge Road and Rochore Road were insanitary. One of these houses is the subject of the present appeal.

After the Declaration had been made the Board of Trustees advertised the fact that the Declaration had been made, and served notice on the owner under section 58 (1) (a) and (b). The owner objected; and under subsection (5) the Board furnished him with a copy of the Health Officer's report as a statement in writing of the grounds on which the Board made the Declaration. The Board heard the objections in February; and the decision of the Board was communicated to the solicitors of the owners by a letter dated June 5th, 1934, stating that the Declaration had been submitted to the Governor-in-Council in accordance with section 59. On the following day the Trust was notified that a Writ

of Prohibition would be applied for, and these proceedings were accordingly commenced. On 2nd April, 1935, Huggard, C.J. made an order that:—

“a Writ of Prohibition do issue directed to the Singapore Improvement Trust to prohibit it from further proceeding in the matter.”

The present appeal is directed against this order.

The proposition that a Writ of Prohibition could only issue to the Board as a body performing quasi-judicial functions, as well as a Court was not questioned in the appeal. The authority of *R. v. the Electricity Commissioners*, (1924) 1 K.B. 171 was accepted, and I need therefore say no more on this point.

The writ was applied for on three grounds, the first of which was:—

“The document served on the said Estate and Trust Agencies (1927) Ltd. purporting to be the statement in writing of the grounds on which the Singapore Improvement Trust made the Declaration was not a statement of such grounds within the meaning of section 58 (5) of the Singapore Improvement Ordinance 1927.”

The Report of the Health Officer on the house was as follows:—

- (1) This is a two storeyed brick and tile building, back to back with Nos. 59 and 60 Malabar Street.
- (2) It is 13 feet in width and 135 feet in depth.
- (3) It has two airwells adjoining a centre party wall of dimensions 12 x 8 feet.

There is also an open area of dimensions 14½ feet by 10 feet.

- (4) At the rear of the building a brick latrine, kitchen and bathroom are situated, a corrugated iron bathroom is situated near the airwell on the first floor.
- (5) The ceiling of the first floor front is 10 feet in height, above which there is an attic under the roof.
- (6) The light is good only in that portion of the building which faces North Bridge Road.
- (7) Ventilation is bad, there being no through current of air and no possibility of obtaining it.
- (8) Drainage is through the house by means of a loose plank covered drain.
- (9) Refuse and nightsoil have to be carried through the house for disposal.
- (10) It is impossible for a water carriage sewage system to be installed.

It is clear on the face of it that this report is not what is contemplated by section 58 (5) of the

Ordinance. The report no doubt contains the grounds, or some of them, upon which the house was condemned, but it is not a statement of the grounds. It is evidence upon which the Board acted, not the Board's reasons for condemning the house. And it would appear that the document does not contain all the evidence. The affidavit of Mr. Bartley says:—

“I say that the grounds on which the Board declared the said houses and premises to be insanitary were not confined to consideration of the report of the Acting Municipal Health Officer.....

In addition thereto the Board had visited the said premises and had personal knowledge and experience of the condition thereof. As a result of the reports of Dr. Dawson and of the knowledge and information available to the Board, it appeared to the Board that such premises were in such condition as to be unfit for human habitation.”

We know the contents of Dr. Dawson's report, and we know that the Members of the Board visited the house; but we do not know precisely on what grounds the Board condemned the house; what parts of Dr. Dawson's report were considered sufficient to support the Declaration, or whether any part of it was neglected. Neither are we told what was the knowledge and information available to the Board nor whether individual members of the Board imported their own knowledge or information. I do not necessarily say that they are not entitled to do so. Whether they are or not probably will depend on the nature of the knowledge or information imported. But, whatever the evidence, the objector is entitled to know fully and accurately the grounds upon which the Board has condemned the house.

Mr. Braddell told us that in acting in this way the Board was only following its usual practice; but I respectfully agree with Huggard, C.J. when he says:—

“But in this case I think that the applicants are correct in contending that one is left to guess at what part of these reports are intended to be descriptive and what parts are to represent grounds.”

Mr. Braddell also insisted in reply to my questions that the Board acted on the whole of the report of Dr. Dawson; and that the report therefore in fact constituted the statement of grounds. But I do not see how he can say more than the passage from Mr. Bartley's affidavit which I have quoted; and the difficulties the objector found in ascertaining what were the grounds, becomes obvious as soon as we examine the document.

In the first paragraph Nos. 59 and 60 Malabar Street are mentioned. But in the nature of things, unless perhaps some noxious trade were

carried on there, the fact that our house is back-to-back with them could not be a reason for declaring it insanitary. The reason must be something quite different; it may be that there is no back door through which refuse may be taken; or it may be something else; but it is certainly not what is stated. We are also left to speculate whether paragraphs 2 and 3 have any bearing on unfitness for human habitation. It may be that they imply that ventilation is not sufficient, but paragraph 7 deals with that; or it may mean that light is bad; but paragraph 6 deals with light.

As to paragraph 4, I can quite see that it is undesirable for a kitchen to be near a latrine; but I am left in doubt whether that is the allegation because I cannot see the objection to the proximity of a kitchen and a bathroom, or a bathroom and a latrine; and I have still greater difficulty in deciding whether there is any objection to placing a corrugated iron bathroom near the airwell on the first floor.

In paragraph 5 I do not know if it is alleged that 10 feet is too low for a ceiling and if that is one of the factors rendering the house insanitary, or whether the attic under the roof is complained of or both. Without further description neither appears to me a very serious drawback, and I suppose the attic could be easily removed.

Paragraph 6 introduces a more intelligible ground of objection; but we are only told by implication that the light is not good except in the front of the house; and that statement is not helpful when we are considering whether a house is unfit for human habitation. No doubt the view by the members of the Board supplemented this; but if that is so, we have not the true ground in this paragraph.

Paragraph 8 does not mean (as was suggested in argument) that the sewage passes through the house. This method of drainage, by which sink water, bath water and the like is carried through the house in a drain with a cover which can be lifted for the purposes of cleaning is not uncommon in the older houses in this country. The owner no doubt assumed that this weighed with the Board, but he did not know whether it influenced the decision, because he has probably seen it in other houses which are not declared insanitary.

Paragraphs 7 and 9 do not call for comment. They are no doubt contributory reasons. But paragraph 10 is no reason at all in itself why a house should be condemned. It is possible that some of these paragraphs (No. 10 for instance) are reasons why the Board has not called on the owner to repair under section 62; but the mere fact that the owner has to speculate on the meaning of the document and that his speculations end in perplexity, is sufficient to condemn

the document as a Statement of grounds under section 58 (5). It seems to me plain that it was impossible for the owner (as it is for us now) to deduce from the document with any certainty what were the grounds upon which the Board made its Declaration.

This Statement of grounds is not, I think, the unimportant document that it was represented to be. It was argued that as soon as the grounds had been furnished to the objector under Section 58(5), the statement is not used further in the proceedings; and is not seen by the Governor-in-Council. But that argument is not correct. It is clearly a statement upon which the Board acted, and it must be sent under Section 59(2) (a) to the Governor-in-Council. This Statement is all through the proceedings the foundation of the Board's case against the dwelling place; and the Governor-in-Council is as much bound by it as the Board. It is the document to which the objections are made, and which the landowner comes prepared to answer; and, unless these grounds are clear and unequivocal, not only is the objector embarrassed in his efforts to meet the case against him, but there is further no guarantee that the Governor-in-Council will consider the Declaration on the correct lines. If the Board wishes at any time to shift its ground, it must, I conceive, issue a new statement of grounds and hear objections to the new statement in accordance with the Ordinance. If the only statement of grounds supplied to him is the Report of the Health Officer, the landowner will naturally feel that he has to meet everything in that report, though it may not all have influenced the Board when it made the Declaration. But this is entirely contrary to the scheme of the Ordinance which lays a duty upon the Board to circumscribe the subsequent inquiry both before themselves and before the Governor-in-Council by a precise statement of the grounds upon which they made the Declaration.

In *Drayson v. Andrews*, 10 Ex. 472 it was held that under section 35 of the Common Law Procedure Act of 1854 the grounds upon which a rule *nisi* is obtained for a new trial or to enter a verdict or non-suit must be *specifically* stated in the rule; and therefore a rule *nisi* for a new trial on affidavits stating that the rule was granted "on the grounds set forth in the affidavits annexed" is insufficient. Section 33 of the Common Law Procedure Act enacted that "in every rule *nisi* for a new trial or to enter a verdict or non-suit the grounds upon which such rule shall have been granted shall be shortly stated therein." The reasoning of this decision appears to me to be apposite to the present case. For section 58(5) similarly makes it obligatory to provide the grounds; and *Drayson v. Andrews (ubi sup.)* decides that it is insufficient to refer a party to the "affidavits annexed." Yet when Messrs. Donaldson and Burkinshaw required a statement

in writing of the grounds on which the Board made the Declaration, the Secretary of the Improvement Trust replied:

"I enclose a copy of the report of the Acting Municipal Health Officer on each house stating the grounds on which the building is declared to be insanitary."

This then is in my opinion a valid objection to the jurisdiction of the Board; because the absence of these grounds means the absence of proper restriction on the Board and the Governor-in-Council in the consideration of the validity of the Declaration. And the defect appears on the face of the proceedings. In *Farquharson v. Morgan*, (1894) 1 Q.B. at p. 556 Lord Halsbury said:—

"It has long been settled that, when an objection to the jurisdiction of an inferior Court appears on the face of the proceedings, it is immaterial by what means and by whom the Court is informed of such objection. The Court must protect the Prerogative of the Crown and the due course of the administration of justice by prohibiting the inferior Court from proceeding in matters as to which it is apparent that it has no jurisdiction."

I think therefore that on this ground the applicant is entitled to a writ of Prohibition; and because the want of jurisdiction appears on the face of the proceedings no question of waiver arises.

It will, I think, be convenient to deal with the third ground next:—

"The Declaration made by the Singapore Improvement Trust in respect of the said building was not made *bona fide* or in proper exercise of the powers conferred by section 57 of the Singapore Improvement Trust Ordinance 1927 in that action taken under that Section ought only to be employed in respect of a house individually unfit for human habitation, and ought not to be employed as a means of carrying out an Improvement Scheme under Part VI of the Ordinance."

The allegation of *mala fides* was not pressed in the Court below; and was not mentioned in this Court; and it is not disputed that Huggard, C.J. was right in finding that the Board gave separate consideration to each of the houses concerned, although only one declaration was made in respect of all the 94 houses. These two questions do not arise on the appeal.

Apart from this the gist of the complaint is that (as Huggard, C.J. found) the Board in declaring the building insanitary took into consideration facts extraneous to those which it was entitled to consider and consequently acted *ultra vires*; and this brings us to the second ground which is as follows:—

"The Singapore Improvement Trust acted *ultra vires* the powers conferred by section 57 of the Singapore Improvement Trust Ordinance 1927 in declaring that the building.....was insanitary in that the declaration was based on facts extraneous to those which the Singapore Improvement Trust could legally take into consideration under section 57....."

The Board made the Declaration under section 57 of the Ordinance which is as follows:—

"Whenever it appears to the Board that within its administrative area any building which is used.....as a dwelling place is of such a construction or in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary."

There is no doubt that section 57 makes the Board the sole judge of the issue whether the dwelling place is or is not unfit for human habitation; and this Court is not concerned with the correctness of that finding. But the allegation is that the Board took into account matters which it could not properly consider under section 57. I have not found any authority which helps us in the interpretation of this section; we are thrown back on the statute itself; and I am quite clear in my mind that the words "of such a construction and in such a condition" refer to the construction and the condition of the house itself, and not to its construction and condition in relation to its surroundings.

A house may be condemned perhaps because it has no door opening on a back lane, or because the only drain it has passes through the house or for other reasons. But in considering whether a building is capable of being rendered fit for human habitation, the Board must take into account the surroundings, as for instance whether the drain can be taken out of the house otherwise or whether a back lane can be made. But the reasons for declaring a dwelling place insanitary must be in the irreparable construction and condition of the house itself. If the Legislature had intended otherwise it would have been easy to say so; as for instance it did in the definition of obstructive building in section 3 of the Ordinance. And a consideration of the environment of a dwelling place which leads to the conclusion that the house is insanitary, would no doubt involve other dwellings in the condemnation, and the Board might then be in danger of trespassing into Part VI of the Ordinance. The case of *Hall v. Manchester Corporation*, 113 L.T.R. 465 does not help us in the interpretation of this section because there is no correspondence in the wording.

We know that under the Municipal Ordinance plans have to be passed before a building can be built at all; and we may presume that this house complied with the requirements of the Municipality when it was built, and that it satisfied the

regulations of that time relating to drainage light and ventilation. It seems difficult to believe that apart from dilapidation or some kindred cause a building which satisfied the Municipality fifty years ago could now be unfit for human habitation. As Lord Dunedin pointed out in *Hall v. Manchester Corporation* (*ubi sup.*).

“‘Unfit for human habitation’ is a very strong expression and vastly different from ‘not up to modern or model requirements.’”

But, as I have said, a proper statement of the grounds of the Board's Declaration was never supplied; and we are here faced with the same difficulty again that we do not know why the Board condemned this house, nor whether it acted upon part or the whole of the evidence before it, nor whether individual members acted for different reasons or on other facts ascertained on their visit. For my own part therefore I am left in doubt and am unable to say that the Board in making the Declaration travelled outside the consideration of the house itself and imported evidence of its condition in relation to its environment. It is no doubt open to us to say that the Board supplied Dr. Dawson's report as a statement of the grounds of the Declaration and must be bound by that. But on a close consideration of that report I am not prepared to say that it goes outside the house itself except so far as it is bound to do in considering whether the defects are remediable under section 62. In my opinion therefore the respondent has failed on this ground.

I have now to consider whether the Respondent can at this stage of the proceedings have a Writ of Prohibition issued. The Declaration has now been submitted to the Governor-in-Council under section 59, and he is seized judicially of the proceedings. The Board is now merely a litigant with the right or duty of appearing before the Governor-in-Council to support the decision of the Board. The writ is addressed only to the Board, now a party litigant; and it was argued that the writ to be effective must be addressed to the Court as well as the party. It is clear on the authorities that the writ may issue against the party alone. In *The Mayor of London v. Cox*, 2 Eng. and Ir. App. Cases at p. 280 Willis, J. giving his opinion to the House of Lords said:—

“The application may be made either against the party or the Judge to be prohibited, or both, though in old times, when the proceeding to be prohibited was an appeal to Rome, it was necessarily against the party only. In modern practice the application in the first instance is made in form against the party and the Court; but it is usually the party, and very rarely the Court, that shows cause against the rule and pleads to the Declaration.”

This is, I believe, the law to-day. But the facts of the present case are unusual and no exact parallel has been cited to us. When the Board has made the Declaration under section 57, it becomes a quasi-judicial body for the purpose of hearing objections to the Declaration, and it remains in that character until it makes a decision under section 59(1) of the Ordinance. During these proceedings it may be prohibited in the same way as a Court. But as soon as it has made the decision to submit the Declaration to the Governor-in-Council, it puts off its judicial functions, and falls back into the position of a litigant charged with the right or duty of appearing before the Governor-in-Council in support of its Declaration.

It was never sought to prohibit the Governor-in-Council; the Court which it is alleged has acted beyond its jurisdiction is the Board, though I think the hearing before the Governor-in-Council cannot escape the infection of the Board's vicious assumption of jurisdiction; and although the writ is too late to prevent the Board from making its decision, and does not avail against the Governor-in-Council, it aims at preventing the Board from carrying its decision into effect. As I understand the position, the Board is not sought to be prohibited as a litigant before a Court acting in excess of its jurisdiction, but as a Court attempting to carry into effect ministerially an order it had not the right to make.

Whether or not the writ will be effective, it seems to me, may depend largely on the question whether the Board has the duty or only the right to appear before the Governor-in-Council. The argument was based on the meaning of the word “may” in section 59(5):

“At such hearing the Board may appear by one of its officers or by an advocate and solicitor of the Supreme Court and the objector may appear as provided in section 58(4).”

If this subsection is intended to lay upon the parties a right or duty to appear before the Governor-in-Council, then the interpretation of the word “may” becomes important. I think it must be the same in both parts of the subsection. If it is permissive for the objector, it is permissive to the Board; and if obligatory to the Board, it is obligatory to the objector. The words “may” and “shall” are discriminated very carefully in Part V, and it is clear they have been designedly differentiated. It is obvious that the appearance of the objector is permissive; he may wish to discontinue his objection. It follows, if the subsection applies at all, that the appearance of the Board is permissive.

But in my opinion the argument whether this subsection confers a right or imposes a duty on the Board is founded on a misconception. The subsection merely provides the way in which the parties may be represented. It is subsection (4)

which gives the Board and the objector the right to be informed of the time and place at which they may be heard, and impliedly gives them the right to be heard. But subsection 7 clearly contemplates the absence of either or both of the parties. I conclude therefore that on a proper construction of section 59 the Board has the right and not the duty to attend the proceedings before the Governor-in-Council. This will serve to distinguish our case from *R. v. Chester Licensing Justices*, (1914) 3 K.B. 349, where the Compensation Authority were bound to hold the inquiry, but I find that case difficult to reconcile with others.

In the case of *Clifford v. O'Sullivan*, (1921) 2 A.C. 570 Viscount Cave says at p. 584:—

"A further difficulty is caused to the appellants by the fact that the officers constituting the so called Military Court have long since completed their investigation and reported to the Commanding Officer so that nothing remains to be done by them, and a Writ of Prohibition directed to them would be of no avail. What the appellants really desire is an Order restraining General Macready and General Strickland from confirming and carrying out the sentence."

This case however is not quite parallel because the Board, unlike the so-called Military Courts, although its quasi-judicial functions are at an end, still retains an interest in the proceedings and is given by the Ordinance the right of appearing as a litigant before the Governor-in-Council and supporting its decision as a Court. It is therefore *functus officio* as far as it is a Court, but as a body there is still something for it to do. Lord Sumner at p. 591 says:—

"So far as the evidence shows the officers who constituted the Military Court are now completely *functi officio*, and as a tribunal are now definitely dispersed, so far as this case is concerned. There is no material to support the surmise that they might be called upon to re-consider either their decision or their sentence. True, judgment, though given, is not yet executed, but the execution is not in the hands of their officers or of anyone acting under their directions or authority."

This passage, I think, serves to distinguish the two cases. The Board has no doubt ceased to exercise its judicial functions; but the execution of its order is committed to it both in the right to appear and support it before the Governor-in-Council, and in carrying it out after approval.

On the other hand in *The Kensington Income Tax Commissioners v. Aramayo*, (1916) 1 A.C. 215 Mr. Aramayo questioned the right of the Kensington Income Tax Commissioners to fix him with liability for income tax, and he claimed to

prohibit them from proceeding on certain assessments. It was held that the Commissioners for Kensington exceeded their jurisdiction in charging Mr. Aramayo, and a writ of Prohibition was issued against them. But the writ was issued after the assessments were made, but before payment. Lord Parmoor said at p. 287:—

"The question whether Prohibition will lie has not been argued, but I entertain no doubt that it is an appropriate remedy if the Kensington Commissioners have acted without jurisdiction."

This case again is not quite parallel, because the Board is not merely charged with the execution of its own order; but with the right of appearing to support it before the Governor-in-Council, who acts with an independent discretion.

I do not think that the case of *R. v. Woodhouse*, (1906) 2 K.B. 501 is an authority against the proposition that a Writ of Prohibition can issue to prevent a Court carrying out an order made in excess of its jurisdiction. The case deals with *certiorari* and not *prohibition*. Fletcher Moulton, L.J. at p. 534 says:—

"The true view of the limitation would seem to be that the term "judicial act" is used in contrast with purely ministerial acts. To these latter the process of *certiorari* does not apply, as for instance to the issue of a warrant to enforce a rate, even though the rate is one which would be questioned by *certiorari*. In short there must be the exercise of some right or duty to decide in order to provide scope for a writ of *certiorari* at common law."

It is true that Atkin, L.J. in *R. v. the Electricity Commissioners*, (1924) 1 K.B. 171 said:—

"I can see no difference in principle between *certiorari* and *prohibition*, except that the latter may be invoked at an earlier stage. If the proceedings establish that the body complained of is exceeding its jurisdiction by entertaining matter which would result in its final decision being subject to being brought up on a *certiorari*, I think that *prohibition* will lie to restrain it from exceeding its jurisdiction."

But I do not think that it follows from the case of *R. v. Woodhouse* (*ubi sup*) that a Writ of Prohibition will not issue to prohibit the effect of an order made without jurisdiction. It is just in this point that the writs differ, and from the nature of the case *certiorari* must operate on the order itself, and not on the warrant to enforce the order, while Prohibition can operate on the warrant to enforce the order, if by so doing it can prevent the illegal order from taking effect.

The true position seems to be summed up in a dictum of Wright, J. in *Re London Scottish Permanent Building Society* 68 L.J. Q.B. at p. 113 that "an application for prohibition is never too late so long as there is something left for it to

operate on." It is true that this was a dictum made in the course of the argument but it was expressly approved by Scrutton, L.J. in *Rex v. North*, (1927) 1 K.B. 491. In that case the vicar of Eye was ordered on July 24th, 1925, by the Consistory Court to pay the expenses of repairing a screen in his church. On February 11th, 1926, a monition was issued ordering him to pay the money under threat of sequestration. A Writ of Prohibition was issued because the vicar was not cited and did not appear. Scrutton, L.J. said at p. 503:—

"In the first place they said that the vicar was guilty of undue delay in applying for the writ. But, in my view, so long as a sentence for a payment of a penalty is unexecuted, prohibition may lie if there is a threat to execute it I agree with the dictum of R. S. Wright, J. a Judge who had great familiarity with this subject in *In re London and Scottish Permanent Building Society* that 'an application for Prohibition is never too late so long as there is something left for it to operate upon.' When the sentence is unexecuted, a statement of intention to execute it may be followed by a writ of Prohibition, however long a time may have elapsed since the original sentence was pronounced."

And it is, I think, quite clear on the authorities that what is left need not be a judicial act. It seems to me contrary to common sense and principle if a Writ of Prohibition which will run against a Court to prevent it making an order, will not run to prevent the same Court from carrying out the order illegally made.

What we have now to decide therefore is whether there was something to be done by the Board which if subjected to a Writ of Prohibition would effectually stop the proceedings. The next stage in the proceedings is the hearing before the Governor-in-Council; and it was very strongly pressed upon us that whether this section imposes a duty or confers a right, a Writ of Prohibition cannot run to forbid the exercise of a statutory right or the performance of a statutory duty. The case of *R. v. Chester Licensing Justices*, (1914) 3 K.B. 349 was cited to us as an authority for that proposition. I have come to the conclusion, however, that the Board has no more than the right to appear, and even if it has a duty, I can see no analogy between the two cases; for there is all the difference in the world between prohibiting a judicial body from holding an inquiry which it is bound to hold on a report which is on the face of it a good report, and prohibiting such a body from pursuing an order which it has made in excess of its jurisdiction. The right to appear arises directly out of the vicious proceedings of the Board, and is founded upon them. If the foundation is bad, then no

superstructure of statutory rights or duties can be built upon it. The mere fact that a Writ of Prohibition has issued means that the Board has acted without jurisdiction, and it follows that the Board cannot be heard to say that they have a statutory right to take a step towards carrying into effect a decision of their usurped jurisdiction. It is still, in the words of Viscount Cave in *Clifford v. O'Sullivan* (*ubi sup*), attempting to exceed its jurisdiction.

The writ therefore prohibits the Board from appearing before the Governor-in-Council, and, as I have said, I can see nothing in the Ordinance which makes the appearance of the Board a condition of the jurisdiction of the Governor-in-Council. On the contrary when there is an objection made, the Governor-in-Council must inform both parties of the time and place of hearing; and, whether or not the Board appears, the hearing proceeds; and the Governor-in-Council must make one of two orders, either approve or revoke the Declaration. The Governor-in-Council is under no duty to obey the writ. Indeed in my opinion he must proceed, in spite of the writ, to approve or revoke the Declaration, and I suppose that in addition to the merits, he may consider the matters that have occupied this Court.

The writ therefore is of no avail to stop the continuation of the proceedings before the Governor-in-Council. But it does not follow that for that reason it is ineffective. The Governor-in-Council may only make one of two orders. If he revokes the Declaration, the writ becomes unnecessary; but if he approves it, the original Declaration of the Board becomes a final order which imposes a liability upon the objectors; and the Board then becomes charged with the duty of carrying out the Declaration under sections 60 and 61. But the writ prohibits the Singapore Improvement Trust from further proceeding in the matter. It will therefore effectually prevent the Trust from carrying out any steps consequent upon the approval of the Declaration, and will not therefore fall inoperative.

The valid Order is the Declaration; it is made as an order *nisi* under section 57. The objector then has two opportunities to get it discharged, once before the Board, and once by the Governor-in-Council. But when the Governor-in-Council has finally considered and approved it, it is the original Declaration which becomes the final order and which the Board is enjoined to carry out. If the Board is prohibited from carrying out this order, it is all that the landowner requires, and the writ will operate against the Board and be effective for this purpose.

I think therefore that this appeal should be dismissed.

THOMAS, C.J. (F.M.S.)—This is an appeal from the judgment of the Chief Justice of the Straits Settlements granting the issue of a writ

of prohibition directed to the Singapore Improvement Trust to prohibit them from proceeding further in respect of a declaration made by the Trust to the effect that certain houses in Singapore were insanitary within the meaning of section 57 of the Singapore Improvement Ordinance, 1927.

The Singapore Trust Ordinance of 1927 created a Board called the Singapore Trust, and imposed on it the duty of carrying out the provisions of the Ordinance. I will refer to it hereafter as the Board.

Part V of the Ordinance relates to insanitary buildings, and consists of sections 57—63. These sections set out the various steps which have to be taken and the various stages in the proceedings which lead to the making of a final order by the Governor-in-Council.

These stages have been divided by the appellants into three and by the respondents into six. The object of the latter division would seem to be to separate what is considered to be merely procedure. Section 57 is as follows:—

“Whenever it appears to the Board that within its administrative area any building which is used or intended to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary.”

This section is in effect subject to what is practically a proviso contained in section 62 which is as follows:—

“Instead of declaring a building to be insanitary the Board if it considers that such building is capable of being rendered fit for human habitation, may order the owner to carry such works therein as will in its opinion achieve that purpose.”

So that it is the first duty of the Board where a building appears to be unfit for human habitation to consider whether it is capable of being rendered fit for human habitation. And only when it comes to the conclusion that it is incapable of being rendered fit for human habitation should it proceed under section 57.

In October, 1933, the Board received a report from Dr. Dawson, the Acting Municipal Health Officer, relating to some 94 houses in an area bounded by Victoria Street, Bugis Street, North Bridge Road and Rochore Road, Singapore. Included amongst these houses was No. 543 North Bridge Road belonging to the present respondents.

The houses referred to in the report were considered by the Board, and were declared by resolution to be insanitary on November 23rd, 1933. No objection is taken to the form of resolution which included all the houses reported upon. Advertisements were published; notices were served in December, 1933, on the various owners as provided by section 58 (1) (b) of the

Ordinance, and objections were received from the present respondents and other owners. The objection by the present respondents was dated the 27th of December, 1933, and the grounds for the Board's declaration were asked for.

In accordance with section 58(5) the objectors were furnished with a statement in writing of the grounds on which the Board made the declaration.

On the 21st and 22nd of February, 1934, the Board proceeded to consider the objections. The present respondents were present [in accordance with section 58(3)] by their advocate, and were heard. They were given the opportunity of calling and cross-examining witnesses. Subsequently the objectors were informed by a letter dated the 5th of June, 1934, that the declaration had been submitted to the Governor-in-Council in accordance with the provisions of section 59 of the Ordinance.

On the following day notice was given to the Board that application would be made for writs of prohibition against the Board, and subsequently an Originating Summons was issued. The grounds set out in the Originating Summons have been summarised by the learned Chief Justice as follows:—

- (a) That the document furnished to the applicants purporting to be a statement in writing of the grounds on which the declaration had been made was not a statement in writing of such grounds within the meaning of section 58 (5) of the Ordinance;
- (b) That the Trust acted *ultra vires* in declaring the buildings in question to be insanitary, in that the declaration was based on factors extraneous to those which the Trust could legally take into consideration under section 57;
- (c) That the declaration was not made *bona fide* or in proper exercise of the powers conferred by section 57, in that action taken under that section ought only to be employed in respect of houses individually unfit for human habitation, and ought not to be employed as a means of carrying out an improvement scheme under Part VI of the Ordinance.

I may as well dispose of ground (c) immediately. The learned Chief Justice has decided that he can see no reason to suspect that the action of the Board in proceeding under Part V was other than *bona fide* and in the genuine belief that in so proceeding it was acting within the powers conferred by that Part. With that conclusion I am in full agreement. And in fact there has been no appeal in respect of that part of the judgment. I am also in agreement with the learned Chief Justice when he says:—

"I am satisfied on the evidence before me that the board did not in fact consider each individual house before making the declaration more fully."

I have given a bare outline of the various steps taken. It is now necessary to go into some of them.

Dr. Dawson's report was as follows:—

"Insanitary condition of No. 543 North Bridge Road.

1. This is a two storied brick and tile building back to back with Nos. 59 and 60 Malabar Street.
2. It is 13 feet in width and 135 feet in depth.
3. It has two air wells adjoining a centre party wall of dimensions 12 feet by 8 feet. There is also an open area of dimensions 14½ feet by 10 feet.
4. At the rear of the building a brick latrine kitchen and bath room are situated a corrugated iron bath room is situated near the air well on the first floor.
5. The ceiling of the first floor front is 10 feet in height, above which there is an attic under the roof.
6. The light is good only in that portion of the building which faces North Bridge Road.
7. Ventilation is bad, there being no through current of air, and no possibility of obtaining it.
8. Drainage is through the house by means of a loose plank covered drain.
9. Refuse and night soil have to be carried though the house for disposal.
10. It is impossible for a water carriage sewage system to be installed."

The numbers against the various grounds did not appear in the document; they have been inserted by the learned Chief Justice for the more convenient dealing with the grounds.

It is obvious that this report dealt with the building from the point of view whether the building was unfit for human habitation, and also whether it was capable of being rendered fit for human habitation.

The Board visited the premises, and decided to make a declaration under section 57.

It has been argued that the Board was acting in a quasi-judicial capacity and not in a purely ministerial capacity, and that they had not exercised their duties judicially. Mr. Braddell, the advocate for the appellants, is the legal adviser of the Board, and during the hearing before the Board in February, 1934, said:—"I will advise the Board that they have a judicial discretion." But in the argument on the appeal Mr. Braddell contended that that was not an admission by him

that that Board should act judicially under section 57, i.e. in making their declaration..

It has been argued in support of the contention that the Board was acting judicially that in the event of there being no objection a penalty would be attached. But the Board is not to know that there will be no objection. When there is an objection there must be a hearing before the Board, and a subsequent hearing before the Governor-in-Council. Pending the decision of the Governor-in-Council there is no penalty whatever. The premises are merely declared to be insanitary, they are not closed, there is no punishment imposed for their occupation as in the case of *Hall v. Manchester Corporation*, (113 L.T. 465). I am satisfied that the declaration of the Board was a preliminary proceeding and in no wise final when an objection has been made and not withdrawn.

But even if there was a duty imposed upon the Board to act judicially, could it have done anything more than was in fact done? Should it have called upon the owners of the property to give evidence? I can hardly think so, since provision is made for a subsequent hearing.

The Ordinance sets out the procedure to be adopted for the hearing in the following section, but is silent as to any procedure in respect of the making of the declaration. Had it been the intention that the Board should hear the owners or receive evidence from them prior to making the declaration the Ordinance would surely have so stated. I consider that the silence in the matter of the declaration can fairly be interpreted as intentional, and that it was not intended that any owner should be heard prior to the making of the declaration. This is supported by the use of the words 'it appears'.

The Board considered the report and also visited the building. They were thus enabled to check over the statement of the Medical Officer, and to employ their own knowledge as to questions of the construction and condition of the buildings. They were able to consider the whole question from the point of view of section 62 as well as 57. It would scarcely have been proper for the Board not to inspect the buildings. In as much as no provision is made for the hearing of the owner, I see nothing improper in the Board inspecting the buildings without the owner being in attendance.

After the hearing the members of the Board again visited the premises. The owner of the building was not present on this occasion. It does not appear that he asked to be allowed to be present. On that occasion the Board were cautioned by their legal adviser. It has been suggested that because of this caution something irregular may have happened on the former visit. The advice of the legal adviser may well have been given *ex abundanti cautela* and I do not consider that any reflection on the previous visit can be properly inferred therefrom.

Ground (a) in the Originating Summons complains that the statement of grounds furnished by the board was not a statement within the meaning of section 58 (5) of the Ordinance. In dealing with this matter the learned Chief Justice says:—

"In my opinion the effect of this section is to make it obligatory on the Board to furnish objectors with a full and complete statement of all the grounds upon which the Board has acted, and these grounds should indicate clearly the defects arising from the construction or condition of the building, which, in the opinion of the Board, renders or tends to render the building unfit for human habitation."

It is not clear to me what exactly the learned Chief Justice would consider a proper or sufficient statement of the grounds.

In legal matters the word 'grounds' is generally taken to be a very brief statement of a question to be raised or which has been decided. In such cases reasons are given very briefly if at all. For instance, a ground of appeal might be simply that the decision is against the weight of evidence. It is not essential to show in what way it is suggested that the decision is against the weight of evidence. So when the Ordinance required that grounds should be given, in my opinion, it did not require anything more than a brief statement showing in respect of what matter the construction or condition appeared to be unfit for habitation. For instance ground 7 which is 'ventilation is bad, there being no through current of air and no possibility of obtaining it' sets out concisely that the construction of the building is defective in respect of supplying adequate ventilation, and that there is no possibility of this defect being remedied.

The Ordinance does not supply any form or require that the statement of grounds should be given in any special way. In my opinion it is sufficient if the statement of grounds sets forth clearly the matter in respect of which the Board has acted. I, therefore, pass to the consideration of objection (b) which is the main objection of the Originating Summons.

It has been argued that the Board considered matters outside the scope of section 57, and thereby gave themselves an increased jurisdiction not contemplated by the Ordinance. When the grounds for the declaration were applied for, the Board furnished the objecting owner with the report of Dr. Dawson. Mr. Bartley, the Chairman of the Board, swore to an affidavit paragraph 4 of which contains the following:—

"I say that the grounds on which the Board declared the said houses and premises to be insanitary were not confined to consideration of the report of the Acting Municipal Health Officer, portions whereof are set out in the said affidavit. In addition

thereto the Board had visited the said premises and had personal knowledge and experience of the condition thereof. As a result of the reports of Dr. Dawson and of the knowledge and information available to the Board, it appeared to the Board that such premises were in such condition as to be unfit for human habitation."

It has been argued that this affidavit is an admission that the Board considered matters extraneous to the grounds given to the objecting owners. Mr. Bartley was not cross-examined, although he was offered to be produced for that purpose.

The learned Chief Justice says that the affidavit of Mr. Bartley

"appears to me to be a definite statement that the grounds upon which the Board made the declaration were not confined to what appeared in the Municipal Health Officer's reports."

With great respect I would beg to differ from this finding because the Municipal President does not merely say that there were other grounds; he goes on to particularise, and he mentions the other grounds, viz., the visits and the personal knowledge and experience. As I have previously said, it would be highly important that a visit should be made. The members of the Board would hardly be expected to close their eyes on their personal knowledge and experience. I have already drawn attention to the necessity for the Board to consider the possibility of remedying any matters affecting the construction or condition of a building (section 62) before making a declaration under section 57.

The report of Dr. Dawson indicated that the matters complained of were incapable of being remedied. As this report was supplied to the owner, it showed the grounds on which the declaration was made, and also that the matters complained of could not be remedied. I fail to see any objection to this course being adopted. It indicated to the owner that both sections had been considered. And if the grounds had been limited to section 57 then a complaint might have been made that section 62 had not been considered, and that there had been a failure of duty in that respect. All these matters were fully known at the hearing. If in any respect the owner had required further details or information, he could have asked for them. No such request was made. It was explained over and over again that certain portions of the report were descriptive, and that the grounds were apart from such descriptive matter. The owner insisted on his complaint that extraneous matters had been considered.

If it is assumed that the Board has no right to include in the grounds any descriptive matter

and is bound by all the grounds taken individually or collectively in the report, it becomes necessary to consider whether in fact the Board has taken into consideration extraneous matters. For this purpose it is not necessary to consider whether the building was in fact insanitary or not, it having been admitted in the course of the argument that this was no duty of the Court.

Mr. Mundell (the advocate for the respondents) has tabulated certain criticisms of the grounds furnished by the Board. He adopts for convenience the numbers which as I have already mentioned were inserted for convenience in dealing with them by the learned Chief Justice.

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| <p>(1) said to be descriptive. Shows a state of affairs that in England since 1929 has been considered to show a state unfit for habitation.</p> <p>(2) 13 feet in width and 135 feet in depth. Mr. Braddell says that this was inserted because of section 62 and indicated a breach of bye-law 203.</p> <p>(3) Braddell says open area provided is insufficient.</p> <p>(4) Latrine, kitchen and bathroom. Braddell says wrong to have kitchen and latrine close together.</p> <p>(5) This is alleged as a ground of condemnation. The bye-laws do not allow ceilings 10 feet or attics under roof.</p> <p>(6) & (7) Sufficiently dealt with by the Chief Justice and in <i>Hall's</i> case.</p> <p>(8) Drainage may have to do with the construction of the house.</p> <p>(9) & (10) have nothing to do with the construction or condition of the house.</p> | <p>That is ground for condemnation.</p> <p>This is not merely description but a ground for condemnation.</p> <p>That is again a ground of condemnation. I do not know whether corrugated iron bath room being situated near air well is a ground of condemnation. But it is included amongst them.</p> |
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- Mr. Mundell then made the following objections to the grounds.

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| <p>(1) Objectionable: Takes into consideration extraneous conditions, viz. that house is back to back with other houses.</p> <p>(2) Not objectionable <i>per se</i>: but it shows no ground of condemnation.</p> <p>(3) (same as for 2)</p> <p>(4) —do—</p> <p>(5) —do—</p> |
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(6) & (7) Objectionable as grounds because they take into consideration outside factors.

(8) Not objectionable as being outside the purview of section but shows no ground of condemnation.

(9) & (10) Objectionable for same reasons as 6 & 7. Nothing to do with construction or condition.

He summarises these objections that 1, 6, 7, 9 & 10 are outside the purview of the section, and that the Board had no power to entertain those grounds, especially 1, 9, & 10.

Section 57 employs the words:—

“is of such a construction or in such a condition as to be unfit for human habitation.”

Building is not defined in the Ordinance. It is not stated as in the Public Health (London Act) 1891, section 141 to include the curtilage, nor is there any definition of construction. It has been suggested that construction should be interpreted as structural defect. But there is no reason why the word should be so limited. If that had been the intention of the Legislature, it would have so stated as has been done in many English Acts.

The learned Chief Justice referring to the case of *Nunes v. Song Kee Chuan*, relating to nuisance said:—

“the expressions ‘if such construction’ and ‘in such a state (condition)’ have been judicially interpreted and I cannot see any sufficient reason for thinking that the local legislature, in continuing to use those expressions, intended that they should bear any different interpretations from that which had been already judicially placed upon them. If the Legislature had had any such intention it would have been a simple matter to express it.”

It should, however, be remembered that the case of *Nunes v. Song Kee Chuan* has only recently been reported (4 Malayan Law Journal, page 1932). The case of *Queen v. Parby*, 22 Q.B.D. related also to the abatement of nuisances. It may supply some sort of definition as to “premises in such a state as to be a nuisance,” but as far as I can see, it gives no definition of construction. In the absence of any definition there would seem to be no reason why the words ‘of such a construction’ should not be read as ‘so constructed.’ And if these words are adopted, then the question is whether the building is so constructed as to be unfit for human habitation. For this purpose regard must be had to everything which affects the building. A building, perfect in itself, which was squeezed into the centre of four other high buildings which prevented any access of light or air could hardly be considered to be so constructed as to be fit for human habitation, and so also

where a land-slide has removed a considerable portion of the site on which a building has been constructed. The fact then that a building is back to back with another is in my opinion a matter which might well be regarded when consideration is being had to whether it is so constructed as to be fit for human habitation.

The area of the site with relation to the building constructed thereon is also a matter for consideration; for a site might be so extensive as to remove all possibility of objection or so exiguous that light and air might not be obtainable. And in this respect the words contained in the judgment of Lord Dunedin, should be borne in mind, viz:—

“Nor do I think that anyone is entitled to trust for ventilation to his neighbour's ground which may be lawfully covered with buildings right up to the edge of the property;” (*Hall v. Manchester*, 113 Law Times Reports, at page 467).

And if anyone cannot trust for ventilation, so also he cannot in my opinion trust for light or sanitation. So the third ground which relates to ventilation and can be read with ground No. 7 was also a matter properly considered by the Board, and also the fourth ground which can be read with grounds Nos. 8 and 9. Ground 10 simply states that these matters cannot be remedied.

So, far from considering extraneous matters, the Board has refused to consider extraneous matters which in fact the owner wishes it to do. There may be excuses for the construction. It may be that other buildings are also constructed so as to be unfit for human habitation. The Ordinance makes no allowance for such excuses. Each building has to be considered individually without regard to others. It has been so considered, and the construction has been found to be unfit for human habitation. How then can the other buildings be suddenly imported to show that the construction of the building is dependent on that of other buildings? It is tantamount to saying that the buildings must be considered individually except when it suits the purposes of the owner. I conclude, therefore, that whether the duty of the Board was ministerial or quasi-judicial, it has not taken into consideration any extraneous matter or departed from the powers conferred upon it by section 57.

In view of my opinion as to these matters it is not essential to go into the question of prohibition. But I will deal with it shortly.

Whenever a person or body of persons is placed in the position of a tribunal (not necessarily a Court), (see *R. v. L.C.C.* 1931, 2 K.B. at page 233), on which is imposed the duty of dealing with a matter not ministerially but judicially or in a quasijudicial manner, then it is incumbent

on that person or body to act judicially. It is not permissible for such a person or body of persons to extend its jurisdiction by including extraneous matters. Any infringement of these simple rules will permit action to be taken either by way of certiorari or prohibition according to the circumstances of the case—(see *Rex v. Electrical Commissioners*, 1924, 1 K.B. at page 204, *Rex v. L.C.C.* 1931, 2 K.B. 215).

But it is an essential proviso that any application for prohibition must be made before the person or body of persons is *functus officio*. There must, in other words, remain something left for it to operate on [see *In re London Scottish Permanent Building Society*, 63 L.J. (Q.B.) 112 & 113]. In the present case the declaration had been made, the objection had been received, the hearing had taken place, and a submission had been made to the Governor-in-Council. If any objection has been made and not withdrawn, then the Governor-in-Council shall inform the objectors and the Board of a time and place at which they may be heard (section 59 (4)). At such hearing the Board may appear by one of its officers or by an Advocate and Solicitor of the Supreme Court, and the objector may appear as provided in section 58 (4). By section 59 (5) each party may at the discretion of the Governor-in-Council adduce further evidence—section 59 (6). After hearing the parties, or such of them as may appear, the Governor-in-Council may make an order approving or revoking the declaration—section 59 (7).

The learned Chief Justice has held that whereas the objector has a right to appear, the Board has a duty to appear. The same word is used in respect of both, and the power of both to appear is dealt with in the same section—section 59 (5). I should hardly think that the word ‘may’ could in the same section be interpreted to affect the Board and the objector differently. However this may be it has been argued that the right or duty to appear before the Governor-in-Council is something left over on which the order for prohibition can act.

Two cases have been referred to by the learned Chief Justice, viz. *In re The London Scottish Permanent Building Society* [63 L.J. (N.S.) Q.B. 112], and *King v. North* (1927, 1 K.B. 491). In each of these cases there remained the question of the enforcement of an order for costs. In one case execution might issue; in the other an application had been made for sequestration. In each case the services of the tribunal would be necessary to obtain satisfaction. So that there was obviously something left to be done by the tribunal itself on which the order of prohibition could operate. In the latter case Lord Atkin said (at page 506):—

"That order being made without jurisdiction he is entitled to treat it as mere *brutum fulmen* so long as no attempt is made to enforce it by execution upon his property, and when that is done by sequestration, he is at liberty to apply for a prohibition to prohibit further proceeding on the order."

Now the Board has made no order. It had no power to make an order. It had no power to impose a penalty either directly or indirectly, and no penalty has been imposed or has been incurred by any act of the Board. It had no power to make any order as to costs, and in fact no order as to costs has been made. It had firstly the power to make a declaration and subsequently the power to make a submission. Thereafter the Board is merely a litigant before a new tribunal, differently constituted, having the right to go into the whole question and to hear additional evidence. It is obvious that such a right or duty relates to a new matter. It is no vestige of power to enforce an order which has been made. But when the expression, something left to act upon, is used, it must relate to some power still remaining with the tribunal to enforce its order. I can find no such power.

In my opinion, therefore, this appeal should be allowed with costs here and below. There will be a certificate for two counsel at such hearing. Any sum deposited in Court by the appellants as security must be returned to the appellants or their advocates.

TERRELL, J.—This is an Appeal by the Singapore Improvement Trust (hereinafter called the Board) against an order of the Chief Justice dated the 2nd April, 1935. The operative part of the Order is as follows:—

"It is ordered that a Writ of Prohibition do issue directed to the Singapore Improvement Trust to prohibit it from further proceeding in the matter."

The "matter" referred to was the making of a declaration that No. 543 North Bridge Road was insanitary within the meaning of Section 57 of the Singapore Improvement Trust Ordinance, 1927, and the applicants, the present respondents, had alleged that the proceedings in making the declarations were irregular, invalid and *ultra vires* and that the Board had no jurisdiction to proceed in the matter or to refer it to the Governor in Council.

Section 57 of the Ordinance reads as follows:

"Whenever it appears to the Board that within its administrative area any building which is used or is intended or is likely to be used as a dwelling place is of such a construction or is in such a condition as to be unfit for human habitation, the Board may by resolution declare such building to be insanitary."

The facts are shortly as follows:—

In September and October, 1933 the acting Municipal Health Officer made reports on 94 houses in a certain area known as the Bugis Street area, bounded by Victoria Street, Bugis Street, North Bridge Road, and Rochore Road. The houses reported on included No. 543 North Bridge Road which is the subject of the present proceedings.

Each house was reported on separately and the members of the Board visited each of the houses and on the 22nd November, 1933 made a declaration to the effect that all the 94 houses were insanitary.

In due course the owners were served with notices and the solicitors for the present respondents wrote to the Board informing them that their clients objected to the declaration and calling for a statement of grounds to which they were entitled under section 58(5) of the Ordinance.

The sub-section reads as follows:—

"The objector shall be furnished with a statement in writing of the grounds on which the Board made the declaration."

In reply the Board forwarded a copy of the relevant report of the acting Municipal Health Officer and arrangements were made for the Board to hear objections. The objections were heard on the 21st and 22nd February, the owners being represented by counsel and expert witnesses. The Board having considered the objections adhered to their original declaration and submitted it to the Governor in Council on the 5th June, 1934 under the provisions of section 59 (1). Thereupon the solicitors for the owners informed the Board that they would apply for a Writ of Prohibition and the application which initiated these proceedings was made on the 5th November, 1934, the Order *nisi* being granted on the 9th November, 1934.

Now the first point to notice is, that as soon as the Board received the report of the Municipal Health Officer they had three courses open to them, i.e.

- (a) they could refuse to take any action or
- (b) they could make the declaration complained of
- or (c) they could consider under the provision of section 62 (1) whether the building, though for the moment insanitary, was capable of being rendered fit for human habitation, and if so whether they should order the owner to carry out such works as might be necessary for achieving the object.

This aspect of the Board's duties is important as it necessarily required the Municipal Health Officer to report on the surroundings of the houses in question, so as to enable the Board to decide e.g. whether the construction of a back lane was

possible or whether further ventilation could be provided. The fact therefore that the Municipal Health Officer's report contained matters of description was a necessary result of the Board's statutory duties under section 62. The applicants however devoted a large portion of their argument to the form of the Municipal Health Officer's report and asked the Court to draw the inference that in considering the Municipal Health Officer's report the Board considered matters other than the "condition" and "construction" of the house itself and accordingly exceeded their jurisdiction whether or not the report was a sufficient "statement of the grounds" within the meaning of section 58(5) will be considered later.

The procedure under sections 57, 58 and 59 of the Ordinance may be conveniently divided into three stages, i.e.

- First stage.** The consideration of the Municipal Health Officer's report resulting in a declaration under section 57.
- Second stage** The hearing of objection by the owners and the decision of the Board to refer the matter to the Governor in Council.
- Third stage.** The consideration of the matter by the Governor in Council at which the parties may be represented and further evidence adduced. This stage results in the Governor in Council making an Order either approving or revoking the declaration.

It is to be observed that when the Writ was granted the third stage had already been reached. It was too late to prohibit the Board from referring the matter to the Governor in Council because they had already done so. All that the Writ professes to do is to prevent the Board from "proceeding" that is from appearing before the Governor in Council as litigants.

The question arises as to whether the Board was acting in a ministerial or judicial capacity at the various stages indicated above. It was argued by the Respondents that in considering the Municipal Health Officer's report and making their declaration under section 57 the Board were acting in a quasi-judicial capacity. With all respect to the learned Chief Justice's finding, I am unable to accept this argument. It appears to me that most ministerial acts require the situation to be considered in a judicial manner, and that an executive Officer must always exercise his judgment fairly and impartially, but that is a very different thing to saying that every ministerial act is for that reason a quasi-judicial act. To make it a quasi-judicial act the ministe-

rial officer, in this case the Board, must be shown to have acted in some manner as a court, and it is only when both sides appear and objections are considered that the Board acted as a kind of court and its functions became quasi-judicial.

I do not think it necessary to refer to all the authorities on this point as to my mind the matter is concluded by the following passage from the Judgment of Greer L.J. in *Errington vs. Minister of Health*, (1935, 1 K.B. page 249 at 259) which is quoted with approval by Swift, J. in *Frost vs. Minister of Health*, 1935, 1 K.B. at pp. 292-293:

"In so far as the Minister deals with the matter of a confirmation of a closing order in the absence of objection by the owners, it is clear to me, and I think to my brethren, that he would be acting in a ministerial or administrative capacity, and would be entitled to make such inquiries as he thinks necessary to enable him to make up his mind whether it was in the public interest that the order should be made. But the position, in my Judgment, is different where objections are taken by those interested in the properties which will be affected by the order if confirmed and carried out. It seems to me that in deciding whether a closing order be made in spite of the objections which have been raised by the owners it seems to me reasonable that the Minister should be regarded as exercising quasi-judicial functions."

It follows therefore that under section 57 the Board were acting ministerially, and that they were acting quasi-judicially on the hearing of the objections before them. It was admitted that they would again be acting ministerially when they appeared before the Governor in Council as litigants under section 59 (5), and at any subsequent stage of the proceedings.

Although the applicants' original argument was that the Board were acting *ultra vires* in making their original declaration and that they were acting in a quasi-judicial capacity at the first stage of the proceedings, I do not think that this question is really material. It was conceded that the Board were acting in a quasi-judicial capacity at the second stage. Accordingly if at that stage they confirmed and adopted a declaration originally made without jurisdiction, the applicants would not be precluded merely by the fact that the original declaration was made at a stage of the proceedings when prohibition would not in any circumstances be granted.

Before considering whether in fact the Board exceeded their jurisdiction, it is necessary to consider the Appellants' preliminary point that even at the second stage the necessary conditions

for the issue of a Writ of Prohibition had not arisen.

As regards the true nature of the prerogative writs of *certiorari* and prohibition the question has been frequently considered in the Courts in England during recent years and it will only be necessary to refer to one or two authorities. Dealing with *certiorari* Lord Parmoor in *Local Government Board vs. Arlidge*, 1915 A.C. p. 120 at p. 140 describes the Writ as follows:

"The power of obtaining a Writ of *certiorari* is not limited to judicial acts or orders in a strict sense, that is to say, acts or orders of a court of law sitting in a judicial capacity. It extends to the acts and orders of a competent authority which has power to impose a liability, or to give a decision which determines the rights or property of the affected parties."

In the case of *Rex vs. Electricity Commissioners*, 1924, 1 K.B. p.171 at page 205 Atkin, L.J. describes the writs of *certiorari* and prohibition in similar terms. He says:—

"Wherever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, act in excess of their legal authority, they are subject to the controlling jurisdiction of the Kings Bench Division exercised in these Writs."

From these observations, with which I respectfully agree, it would appear that there are at least two conditions to the issue of these writs. First there must be a body of persons acting judicially, or quasi-judicially, and secondly such body of persons must have the right or duty to impose a liability or determine questions affecting the right of subjects. Now it is common ground that in considering the objections of the applicants the Board were acting judicially, but it is very doubtful whether the second condition was fulfilled. On examination of the terms of the Ordinance it is perfectly clear that the Board never makes an Order at all. The only authority that can make an order is the Governor in Council under section 58(7). The hearing before the Governor in Council is in no sense an appeal from any order of the Board nor does the Governor in Council merely confirm an order made by the Board in the way that the Minister of Transport and Parliament confirm an order made by the Electricity Commissioners. Accordingly no "rights are determined" until the Governor in Council's Order is made. The consideration of the declaration by the Board is in fact a mere preliminary to the hearing before the Governor in Council, just as the report of the Municipal Health Officer is a preliminary to the framing of the declaration. The case of *Rex vs. Electricity Commissioners*, upon which the applicants princi-

pally rely is in this respect entirely different. In that case it was objected that the decision of the Electricity Commissioners was not final in that it had to be confirmed by the Minister of Transport and approved by a resolution of both Houses of Parliament. In over-ruling this objection Atkin, L.J. points out at page 208 that it is the order of the Commissioners which eventually takes effect and that neither the Minister nor the Houses of Parliament had any power to make any operative order in respect of the matters in question.

The case before the court bears a close analogy to that of *Rex vs. Minister of Health*, 1929, 1 K.B. p.619. Under Section 35 sub-section (1) of Part II of the Housing Act 1925 "an official representation may be made to a local authority . . . that any houses . . . are unfit for human habitation etc." This corresponds to section 57 of the Ordinance which reads "whenever it appears to the Board that . . . any building . . . is of such construction or in such a condition as to be unfit for human habitation . . ." Under the Housing Acts the local authority shall thereupon "take such representation into their consideration and if satisfied of the truth thereof and of the sufficiency of their resources, shall pass a resolution to the effect that the area is an unhealthy area and shall prepare a scheme etc." Our Ordinance Section 57 states more shortly that "the Board may by resolution declare such building to be insanitary." Thereupon in each case advertisements have to be published and notices given to persons affected. So far the procedure is exactly analogous. At this point, however, there is a difference:—Whereas under the Act the local authority immediately petitions the Minister of Health "praying that an order may be made confirming such scheme," [Section 40 sub-section (1)], the Board invites objections, and has to consider them. Only after considering the objections can the Board submit the declaration to the Governor in Council, who corresponds to the Minister of Health under the Act. The Minister under the Act and the Governor in Council under the Ordinance must both consider the scheme or declaration judicially, and thereupon the Minister "may by order confirm the scheme with or without conditions or modifications" (Section 40 sub-section 3), and in the case of the Ordinance the Governor in Council may make an Order approving or revoking the declaration [Section 59 (7)]. The analogy is accordingly very close. The only difference is that at one stage of the proceedings the Board are acting judicially, while it is not clear that a local authority acts otherwise than ministerially under section 35 (sub-section 1), although they are by statute required to "take the representation into consideration and be satisfied of the truth thereof." Even assuming,

however, that the local authority under the Act performs purely ministerial functions the essential point of similarity between the cases is that neither the local authority nor the Board make any operative order. In the case of the Electricity Commissioners it is the Electricity Commissioners who make the Order and the Minister of Transport confirms it; under the Housing Act it is the Minister of Health who makes an Order confirming the scheme of the local authority, just as under the Ordinance it is the Governor in Council who makes an Order confirming the declaration of the Board.

Another case which bears some analogy is that of the *Kensington Income Tax Commissioners vs. Aramayo*, 1916 A.C. p. 215. In that case the additional Commissioners for Income Tax made a preliminary assessment, but such assessment did not become a charge until it had been signed and allowed by the General Commissioners (See *per Lord Wrenbury* at p.227). The operative Order is therefore the assessment by the General Commissioners. In each of these three reported cases prohibition was sought and granted against the person or body of persons who made the operative order which affected the rights of the applicant, and I cannot see why in the case before the Court prohibition should be sought not against the person or persons who make the operative order but against the Board whose functions, whether judicial or not, are merely preliminary to the obtaining of an operative order from the Governor in Council.

Again looking at the case from another point of view it appears to me that prohibition should never issue in a case where at no stage of the proceedings could *certiorari* issue. *Certiorari* issues to quash the operative order of a judicial or quasi-judicial body which has acted without jurisdiction, and the remedies of *certiorari* and prohibition are really complementary to one another. As *Atkin, L.J.* said at page 206 in *Rex vs. Electricity Commissioners* "I can see no difference in principle between *certiorari* and prohibition except that the latter may be invoked at an earlier stage." Prohibition may also be granted in certain cases which will be referred to later, to prevent the further execution of an operative order made without jurisdiction. Both in the case of the *Electricity Commissioners* and in the case of *Rex vs. The Minister of Health*, 1929, 1 K.B. p.619 there would have been an order by the Electricity Commissioners or by the Minister of Health, which would *prima facie* have been subject to *certiorari*, if the Commissioners or the Minister had exceeded their jurisdiction. It was only because the particular wording of the statutes gave such orders, when made, the force of law, that *certiorari* could not issue, and this was one of the grounds upon which prohibition was granted in both of these cases. In the present case, however, the remedy of *certiorari* is

not available against the Board, not because anything in the Ordinance itself would render it nugatory, but because the Board never makes an operative order upon which *certiorari* could operate.

It may well be that the Court would not refuse the remedy of prohibition if no other remedy were available in respect of a quasi-judicial act, even though it became necessary to extend the principle upon which such writs have previously been issued to a new and unprecedented set of circumstances. This would appear to be the principle of the case of *Rex vs. Electricity Commissioners*, 1924, 1 K.B. page 171 and *Rex vs. Minister of Health*, 1929, 1 K.B. p. 619 the decision in each case involving the issue of the writ in cases not strictly covered by previous authority. If then it could be shown that the remedy now asked for is the only remedy available, the application might have to be considered from a different angle. But I am by no means satisfied that no remedy would be available if the Governor in Council made an order which involved an excess of jurisdiction, and in fact Mr. Mundell submitted that such an order could be quashed by *certiorari*. Accordingly the applicants have not shown that no other remedy is open to them, and it is not imperative in the interests of justice, that the scope of the writ should be extended. I conclude therefore that as the Board is never in a position to make an operative order, neither *certiorari* nor prohibition will lie at any stage of the proceedings before them.

But the Appellants have three further objections to this writ. They say (1) that prohibition will never lie to prohibit a statutory right or duty (2) that in any case the Board have ceased to act judicially and the application is too late, the Board being "*functus officio*" and (3) that the issue of such a writ against a party to the proceedings and not against the inferior court itself is unprecedented and that the Court will never issue a writ which may be ineffective.

As regards the first objection I think that the proposition submitted by Mr. Braddell is too wide. He relied on *Rex vs. Licensing Justices of Chester*, 1914, 3 K.B. page 349. This was a Judgment of the Divisional Court and appears to be inconsistent with some of the later authorities. In particular it seems quite clear from the report of *Rex vs. Electricity Commissioners*, 1924, 1 K.B. p.171 that the Electricity Commissioners had a statutory duty after coming to a decision to refer their order to the Minister of Transport for confirmation. Indirectly therefore they were prohibited from carrying out a statutory duty.

This brings me to the second argument namely that the Board was "*functus officio*" so far as its quasi-judicial functions were concerned, and that the application for prohibition comes too late.

This aspect of the case has been fully considered in the long and careful Judgment of the learned Chief Justice. The learned Chief Justice relies on the dictum of Wright, J. in *re the London Scottish Permanent Building Society*, 63 L.J. Q.B. where he says at page 113, in the course of Counsels address "an application for prohibition is never too late so long as there is something left for it to operate upon," and points out that this dictum was expressly approved by Scrutton, L.J. in *Rex vs. North*, 1927, 1 K.B. at page 503. The learned Chief Justice has reviewed various cases in which the Court has issued prohibition after the completion of the judicial act in question or where at all events the right to prohibit further proceedings has not been questioned. In the case of *Broad vs. Perkins*, 21 Q.B.D. page 533 the Court of Appeal refused prohibition to the Mayor's Court after Judgment but before execution on the ground that the issue of the writ was discretionary, and in the circumstances of the case the Court thought fit to refuse it. The report of the case is very short, but no argument appears to have been raised that the writ should be refused because Judgment had already been given and nothing remained but to issue execution. In the case of *Rex vs. North* cited above prohibition was issued when execution upon a monition was threatened, there having been no jurisdiction to make the monition. In case of the *London Scottish Permanent Building Society*, 63 L.J.Q.B. page 113 the Judge of the City of London Court had without jurisdiction discharged his own previous order and had made an order that the applicant should pay all the costs of the proceedings. Nothing remained therefore except to execute the Order, but the Court granted prohibition the Order having been made without jurisdiction.

On the other hand the case of *Chabot vs. Viscount Morpeth*, 117 E.R. 528 appears to be an authority the other way. In that case a dispute had arisen between the plaintiff and the Commissioner of Woods and Forests with regard to the value of certain lands which had been compulsorily acquired. The sheriff and a jury had assessed the compensation and the sheriff had given Judgment. Nothing remained except for the verdict and Judgment to be entered and recorded and for the Commissioners to act upon it. Prohibition was refused against the Sheriff because he was *functus officio* and against the Commissioners because, *inter alia*, there was no further judicial proceeding to take place and no process of the Court to issue. (See Judgment of Lord Campbell, C.J. at page 533).

Again it is clear from the Judgment of Fletcher Moulton, L.J. in *Rex vs. Woodhouse*, 1906, 2 K.B. page 501 that prohibition will not necessarily lie against a ministerial act merely because it follows as a necessary consequence from a judicial act which might be the subject

of *certiorari* or prohibition. At page 535 he says "the true view of the limitation would seem to be that the term 'Judicial act' is used in contrast with purely ministerial acts. To these latter the process of *certiorari* does not apply, as for instance to the issue of a warrant to enforce a rate even though the rate is one which could itself be questioned by *certiorari*."

The explanation would appear to be that originally as stated above, the writs of *certiorari* and prohibition were only issued in the case of acts which were the strictly judicial acts of a properly constituted court, and this still appears to be the practice in the United States of America; See *High on Extraordinary Legal Remedies*, Chicago, 1874 at page 554 where it is stated "It (prohibition) is substantially a proceeding between two courts, a superior and an inferior, and is the means by which the superior tribunal exercises its superintendence over the inferior and keeps it within the limits of its rightful jurisdiction" and later at page 555 "and while the writ will lie in proper cases as to matters of a purely judicial nature, it will not go if the proceedings which it is sought to prohibit are only ministerial. Thus it will not lie to prevent the issuing of an execution, this being regarded as in no sense a judicial, but only a ministerial act."

In England on the other hand the scope of the writs has been extended in two directions. First they may be applied to persons who have quasi-judicial functions to perform, and secondly the writ of prohibition has been issued in some cases where the further execution of some judicial act is threatened. But the latter must be regarded as exceptions to the general principle, and no precedent has been cited in which the writ has issued to prevent a body of persons such as the Board from exercising purely ministerial functions which are entirely independent of their judicial functions. In the present case it cannot be argued that the Board have made an order which only remains to be executed. Their acts in submitting their declaration to the Governor in Council and appearing before him are purely ministerial acts which are preliminary to obtaining an order from the Governor in Council, and which he may not even make.

It is true that if the Governor in Council makes an order approving the declaration, the Board are charged by section 60 of the Ordinance with carrying the order into effect, and the prohibition issued against them would no doubt operate to prevent them from doing so. But the registration is a purely ministerial act, and no precedent has been cited in which a body of persons acting ministerially has been prohibited from carrying out an order made by a quite a different body of persons acting judicially.

It appears to me therefore that the general rule applies namely that prohibition will not

issue against an authority such as the Board when once it is *functus officio* as regards its judicial functions, and that the present case cannot be brought within any of the recognised exceptions. In my opinion therefore the application for prohibition is made too late and in respect of a purely ministerial act.

Thirdly, the Appellants argue that there is no precedent in modern times for a party to proceedings being prohibited without the Court itself prohibited. This aspect of the case is closely connected with the further argument that no prerogative writ will issue when it may possibly be ineffective. The history of the writ is traced in the well known opinion given to the House of Lords by Willes, J. on behalf of himself and four other Judges in the case of *Mayor of London vs. Cox*, L.R. 2 H.L. page 239. The main question for decision was whether the Mayor's Court was an inferior court, but in reviewing the history of the writ Willes, J. points out that in ancient times in ecclesiastical cases the party only was sometimes prohibited. This would necessarily be the case if the Pope were assuming jurisdiction. The King's writ would not run in Rome but in those cases prohibition against the party would at least be effective as the Pope would not proceed except at the instance of the party and if the party proceeded he could be dealt with as being in contempt. In recent times, however, it is always the Court and the party that is prohibited, or more usually the court only, and the procedure followed in this case, of prohibiting the party and not the court, has no precedent in recent years. There is the additional objection that the writ that has been granted may be ineffective. The Court that now has cognisance of the matter, that of the Governor in Council, is not prohibited at all. Mr. Mundell argued that on hearing that the Board had been prohibited, the Governor in Council would not proceed. That may be so, but the point is that there is nothing in law to prevent the Governor in Council considering the declaration and making an order if he chooses to do so. The Board certainly could not appear without being in contempt, but clearly the appearance of both parties is not necessary, as section 59(7) reads "after hearing the parties or such of them as may appear the Governor in Council may make an Order etc."

It is always a valid objection to the granting of an injunction that the Court's order may be ineffective and in my opinion the same reasoning should apply *a fortiori* to the case of a prerogative writ. Reference may be made to the Judgment of Viscount Cave, L.C. in the case of *Clifford vs. O'Sullivan*, 1921 A.C. 570 where at page 584 he points out that a writ of prohibition directed to the Officers who had constituted the Court martial would be of no avail and makes that one of the grounds for refusing the writ.

For all these reasons I find that even assuming that the Board exceeded their jurisdiction at some stage of the proceedings the applicants have pursued the wrong remedy and that prohibition should never have issued.

Although in my opinion the appellants are entitled to succeed on these preliminary objections, there is a possibility that the case will be carried further, and it is necessary therefore to consider the objections of the Appellants to the interpretation placed by the learned Chief Justice on section 57 of the Ordinance and to his findings on the facts. The conclusions of the learned Chief Justice are set out at page 168 of the record and read as follows:—

"My conclusion therefore on ground (c) of the Originating Summonses is that there is nothing in section 57 which limits its application to any particular class of house, whether it stands alone or in a block of houses (so long, of course, as the house is used or is intended or is likely to be used as a dwelling place), but in considering whether or not a house is unfit for human habitation under that section the Board may only have regard to defects arising from the construction or condition of the house itself, and may not take into consideration defects arising from its proximity to or contact with a neighbouring building or buildings."

With the first part of these findings I respectfully agree. If the applicants' arguments were correct, a house unfit for human habitation *per se*, might in some mysterious manner be protected by the mere fact that it was one of a block of houses, and I can find nothing in the Ordinance to justify such an interpretation of the section.

As regards the second part of the learned Chief Justice's findings, I agree that the Board can only consider the "condition" and "construction" of the house itself. But the fact of the particular house being one in a block of houses may have influenced its construction and if its construction is such that want of light and ventilation render it insanitary, there may be still matters referable to the construction of the house itself. In other words the proximity of other houses may have caused the house to be constructed as it is, but that is not the same thing as saying that the house is insanitary because of the proximity of neighbouring houses. Admittedly the difference between this construction and that of the learned Chief Justice is very small, but it may have the effect of giving the Board a slightly greater latitude. I certainly cannot accept the contention of the Appellants that all surrounding circumstances can be taken into consideration as was the case in *Hall vs. Corporation of Manchester*, 113 L.T. page 465.

In that case the relevant words of the Manchester Corporation (Water Works and Improvement Act) were as follows:—

“In every case where it is certified to the corporation.....that any building or part of a building is unfit for human habitation, the Corporation may..... declare the same is not fit for human habitation etc.”

In view of the wording of the section and the absence of any qualifying words limiting the consideration of the Corporation to the condition or construction of the house itself, the House of Lords held that the Corporation were not limited in any way and could find the particular house unfit for habitation for reasons lying quite outside the construction of the house itself.

Another argument advanced by the Appellants was that the Ordinance made the Board the sole Judges as to whether a house was unfit for habitation or not. It was, I think, admitted by the applicants that if the Board found a house to be insanitary they were the sole Judges as to whether the house was unfit for human habitation, in other words that their decision on the facts was final, provided always that they had not exceeded their jurisdiction by considering circumstances which the Ordinance gave them no right to consider. But Mr. Braddell's submission went much further than that. He argued that, if in fact the Board had considered matters which they ought not to have considered, that was a mere error of procedure, and that there being no appeal as to the facts provided that the Board acted judicially, prohibition would not lie. On this point I respectfully agree with the Judgment of the learned Chief Justice. In my opinion if the Board considered matters which they had no right to consider, that was not a matter of procedure only but went to the whole root of their jurisdiction. The Board could not give themselves jurisdiction by considering matters which the Ordinance had given them no right to consider.

This brings me to the Appellants' final submission that the Board did not in fact consider matters which they were not entitled to consider under the provisions of the Ordinance. In meeting this argument the applicants relied mainly on the terms of the Municipal Health Officer's report a copy of which was supplied to them as the Board's "grounds" under section 58 (5). In particular they point to the first paragraph of the report which reads:—

“This is a two storeyed brick and tile building, back to back with Nos. 59 & 60 Malabar Street.”

The Applicants submitted, and the learned Chief Justice found, that this was a defect that was due to the proximity of the other houses.

In the same way he found that the defects of light and ventilation were due to the proximity of other houses and that other defects mentioned merely showed that the houses did not comply with the present Municipal bye-laws.

I regret that I find myself unable to concur in this finding for the following reasons. First, I have already pointed out that the report must necessarily contain descriptive matters which would not be relevant if the Board only had to consider section 57, but which the Municipal Health Officer is under a duty to incorporate so as to enable the Board to consider whether any action should be taken under section 62. The fact of such descriptive matters being introduced therefore does not of itself prove that the Board when they made their declaration considered matters which they ought not to have considered for the purpose of section 57.

Secondly, the fact that the house in question is back to back with other houses and that it has insufficient light and ventilation is due to the construction of the house itself. I cannot see that the houses in Malabar Street are responsible for No. 543 North Bridge Road being built back to back with them. When No. 543 was constructed it was built to the very edge of the site and if the Malabar Street houses were not already in existence, there was nothing at that time to prevent the owner of those sites also building up to their very edge. The fact therefore that No. 543 North Bridge Road is back to back with other houses is a fault in the construction of No. 543 North Bridge Road itself. The owner cannot insist that his neighbours should provide open spaces, light and air merely because he has neglected to provide them himself and I would refer to the Judgment of Lord Dunedin in *Hall vs. the Manchester Corporation*, 113 L.T. page 465 where he says at page 467:—

“Nor do I think that any one is entitled to trust for ventilation to his neighbour's ground, which may be lawfully covered with buildings right up to the edge of the property.”

Exactly the same reasoning appears to me to apply to the want of light and ventilation in the house in question.

Thirdly, paras 10 and 11 of Mr. Bartley's affidavit of the 12th June, 1935 seem to me to conclude the matter. He deposes to the fact that after hearing the applicants' objection and their expert witnesses the members of the Board made a second inspection of the houses in question. Para 11 reads as follows:—

“Prior to such inspection the members of the Board were advised that they should make up their minds with regard to each house without reference to the block generally or to the individual house in

conjunction with other houses. The Board did so."

The Court was informed that the Board offered Mr. Bartley for cross examination on his affidavit and that this offer was refused. The statements in the affidavit therefore are not challenged and must be accepted.

I have already expressed the opinion that it was only at this stage that the Board were acting as a quasi-judicial body, and the question whether they were exceeding their jurisdiction only arises at this stage and what they did or thought when they were acting ministerially in making their original declaration is really irrelevant. There is, however, no evidence that even at the earlier stage they contravened the provision of the Ordinance. The only evidence on the subject is contained in para 3 of Mr. Bartley's affidavit which says that each house was considered separately. From this simple sentence no inference can be drawn that in considering the houses separately the Board considered extraneous matters. In my opinion therefore grounds 1 (b) and 1 (c) of the Originating Summons do not afford grounds for the issue of a writ of prohibition.

It remains to consider ground 1 (a) which alleges that the document served on the applicants and purporting to be the statement in writing of the grounds on which the Board made the declaration was not a statement in writing within the meaning of section 58 (5).

The argument of the applicants on this part of the case is based first on the form of the Municipal Health Officer's report, upon which I have already commented, and secondly on para 4 of Mr. Bartley's affidavit when he says:—

"The grounds on which the Board declared the said house and premises to be insanitary were not confined to consideration of the report of the acting Municipal Health Officer.....In addition thereto the Board had visited the said premises and had personal knowledge and experience of the condition thereof."

I respectfully agree with the learned Chief Justice that the applicants were "entitled to a full and complete statement of the grounds upon which the Board acted."

One might suggest that in cases where owners are to be deprived of their ordinary rights by the exercise of the Board's paramount powers, the principles of elementary justice should entitle the owners to know on precisely what grounds such paramount powers are being exercised, and in fact the Ordinance does so provide. Section 58 (5) reads as follows:—

"The objector shall be furnished with a statement in writing of the grounds upon which the Board made the declaration."

Even if this sub-section stood alone, I think that the natural inference to be drawn would be that the "statement of grounds" was intended to be something different from, and more specific than the Municipal Health Officer's report. I have already pointed out that the report itself may contain other information to enable the Board to decide whether they will exercise their powers under section 62. When however it comes to making a declaration, such other information becomes irrelevant, and it is the Board's duty to give the actual grounds upon which the decision to declare the house insanitary is made.

The question is, however, put beyond all possible doubt by section 59 (2) which reads:—

"Every declaration submitted under this section to the Governor in Council shall be accompanied by:—

(a) the reports, statements and other matters upon which the Board acted."

I think "statements" in section 59 (2) must refer back to the "statement of grounds" in section 58 (5) and mean the same thing.

There must clearly have been specific parts of the Municipal Health Officer's report upon which the Board relied as their grounds for making the declaration and section 59 (2) contemplates that the statement of such grounds shall be one of the documents submitted to the Governor in Council. I conclude therefore that the Report is not a statement of grounds within the meaning of section 58 (5).

The Appellants however argued in the Court of Appeal as they did in the Court below that the applicants by their conduct at the inquiry had waived any objection to the form of the statement of grounds. The applicants in reply alleged that they had not in fact intended to waive their objection and that in any case the defect in the grounds was a defect arising on the face of the proceedings and could not be waived. I respectfully agree with the statement of the learned Chief Justice that waiver is a matter of intention (See *per* Neville, J. in *Bristol Corporation vs. Sinnot*, 117 L.T. at page 648) and that a want of jurisdiction on the face of the proceedings cannot be waived. I am, however, unable to agree with his conclusions on these points, namely that the want of jurisdiction did not in this case appear on the face of the proceedings, and secondly that there was no intention to waive. While agreeing with his conclusions thereupon I do so on different grounds.

On the question of waiver it is, I think, abundantly clear from the course adopted by the applicants at the hearing of the objections before the Board that they were perfectly well aware that the house was objected to on the ground of

defects in light, ventilation and drainage. They certainly took objection to the jurisdiction of the Board but they never objected to the form of the statement of grounds, or argued that they were kept in the dark as to what the real grounds of objection were, and in para 7 of his affidavit Mr. Bartley states that if such objection had been made, the Board would have considered it, and if satisfied that such statement was insufficient, would have furnished a further and more detailed statement. I am inclined to think therefore that if the applicants could have waived their objection to the form of the statement supplied to them under section 58 (5) they did so waive it. In my opinion, however, the insufficiency of the statement went to the root of the Board's jurisdiction. The jurisdiction of the Board is entirely a statutory jurisdiction and unless and until the provisions of the statute have been complied with, their jurisdiction to consider objections and submit a declaration to the Governor in Council does not arise. As Romer, L.J. said in *Mc Intosh vs. Simpkins*, 1901, 1 K.B. p. 487 in a passage quoted with approval by Stirling, L.J. in *Alderson vs. Palliser*, 1901, 2 K.B. at p. 838 "The condition on which the Judge could exercise the power given by the rule was wanting."

As regards the argument based in para 4 of Mr. Bartley's affidavit, it is not clear to me that it means anything more than that the members of the Board were not satisfied with merely reading the Municipal Health Officer's report but assured themselves by a personal inspection that the statements were correct. If, however, the para is not susceptible of this explanation and in fact the Board considered other matters not mentioned in the report, then in my opinion this was not a defect appearing on the face of the proceedings which went to the Board's jurisdiction. It was a defect of procedure capable of being waived, and in my opinion in view of the course taken by the applicants at the inquiry it was so waived. But this does not affect the applicants' main argument that the form of the statement itself was not in accordance with the requirements of the Ordinance, and in my opinion the insufficiency of the statement showed a want of jurisdiction appearing on the face of the proceedings which could not be cured by waiver. The applicants therefore would have been entitled to succeed on this point if the remedy of prohibition had been available for them.

I need only add that the real complaint of the owners would appear to be that the Board proceeded under Part V of the Ordinance "Insanitary Buildings" instead of Part VI "Improvement schemes." Under Part VI the owners would have been entitled to full compen-

sation even though their houses not only fell short of modern requirements but were individually insanitary. The Board however are a public body owing a duty to the public and the taxpayer, and if by law they are invested with the power of adopting alternative remedies for effecting slum clearance, it is clearly not only their right but their duty to adopt the cheaper method. This point is dealt with in the Judgment of Channell J. in *Hall vs. The Manchester Corporation*, 111 L.T. at page 188 in a passage which is quoted with approval by the learned Chief Justice at pages 155 & 156 of the record. It is entirely for the legislature to say whether the Board should be invested with such plenary powers or not, and it is no concern of the Court that, under Part VI the owners might possibly be compensated too generously whereas under Part V their houses are to all intents and purposes confiscated.

For the reasons stated above I would allow this appeal with costs here and below and with a certificate for two counsel at each hearing.

Appeal allowed.

Solicitors for the Appellants—

Braddell Brothers.

Solicitors for the Respondents—

Sisson & Delay.

[APPELLATE CRIMINAL JURISDICTION]

BURTON, Ag. C.J.

July 29, 1935.

REX vs. KAPPAYA

[SINGAPORE CRIMINAL APPEAL No. 10 of 1935]

Ordinance 132 (Public Authorities Protection) Section 2 subsection (a).

The word "action" in Section 2 subsection 2 (a) Ordinance 132 (Public Authorities Protection) does not include a criminal prosecution and accordingly it is not necessary to give one previous month's notice in writing of an intended criminal prosecution in a case falling within that Ordinance.

Magistrate's Appeal.

Appeal against an acquittal on a question of law.

Adrian Clark, D.P.P. for the Crown (Appellant).

Withers Payne for the Respondent, the Singapore Municipal Dog Shooter.

The facts and arguments sufficiently appear from the Judgment.

Cur. Ad. Vult.

BURTON, AG. C.J.—Kappaya, a Municipal dogshooter, was charged with negligently endangering the personal safety of others and acquitted by the Fourth Magistrate on the